

C-28

July 2, 2007

The Honorable Samuel W. Bodman
Secretary
U. S. Department of Energy
1000 Independence Avenue, S.W.
Washington, DC 20585

Dear Mr. Secretary:

Southern Company Services, Inc., on behalf of itself and acting as agent for The Southern Company and its subsidiaries, Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Southern Nuclear Operating Company and Southern Power Company (collectively, the "Southern"), hereby submits comments in response to the Notice of Proposed Rulemaking published at 72 Fed. Reg. 27471-88 (May 16, 2007) in the matter of "Loan Guarantees for Projects that Employ Innovative Technologies" (the "NOPR").

Southern is committed to the development of advanced electric generating technologies that will protect and improve the environment. In the last decade, Southern has spent nearly \$400 million on the research and development of innovative, environmentally-friendly technologies. Southern is also a proponent of the development of new advanced nuclear power reactors. Georgia Power Company and Southern Nuclear Operating Company have submitted an application for an early site permit and plan to submit an application for a combined operating license for two new nuclear reactors at Georgia Power Company's Vogtle Electric Generating Plant in the first quarter of 2008. Financial support for innovative technologies in a manner that provides the greatest benefit to those utilities committed to the development of such technologies and limits the burden on the taxpayers is of great importance to Southern. Southern believes that new nuclear plants can be built without loan guarantees but supports the loan guarantee program as described in the NOPR with the following comments.

We appreciate the opportunity to provide these comments, and we respectfully request that the DOE clarify or modify its proposed regulations as provided herein.
Respectfully submitted,

Earl Long
Assistant Treasurer
Southern Company Services, Inc.

1. A Technology Should be Considered in "General Use" if it has been ordered for, installed in, or used in five or more projects in the United States.

The NOPR appropriately expresses the concern that eligible projects be based on innovative technologies, and not be in general commercial use. The NOPR requests comments on two alternative definitions of "general use," pursuant to which technologies would be screened for eligibility for loan guarantees. See NOPR at 13. Southern believes that a technology should be considered to be in "general use" at the time that financing has been established for five or more projects in the United States. Southern believes that this definition will avoid ambiguities associated with a definition that uses the terms "ordered" or "used in," but at the same time limit the availability of guarantees to projects using technologies that the financial community has not accepted in a tangible way. Such an interpretation of "general use" will assist the DOE in having a broad portfolio of large and small projects with a wide variety of technologies supported by Title XVII. The most effective means of broadening the portfolio of projects supported by the loan guarantee program is to limit the number of project participants that employ the same technology. The successful implementation of five projects employing a particular technology should greatly eliminate the concerns of the credit markets with respect to a particular technology. Consequently, we anticipate that additional projects employing such technology will have access to the credit markets to finance such projects without a DOE loan guarantee.

Alternatively, a definition that does not consider a technology to be in "general use" until it has been in operation in a commercial project in the United States for five years, could result in an unlimited number of projects utilizing the same technology benefiting from loan guarantees during that five year period. Accordingly, available funding could potentially focus on too few technologies and the resulting, lack of diversification, could prove detrimental to the development of advanced electric energy technologies.

By limiting the number of projects employing the same technology that are supported by Title XVII loan guarantees, the DOE can ensure that it provides support for a broad range of technologies until such time that the credit markets are available to finance the development of projects employing such technologies.

In adopting either alternative, Southern urges that there be some explanation of the types of projects which would be considered the same technology. For example, similar technologies offered by two separate manufacturers might be considered the same technology if the development of one technology helps to eliminate barriers to financing for projects utilizing similar, but competing, technologies. The determination should rest on whether the credit markets view competing designs as the same or different technologies.

2. The Credit Subsidy Cost should be Determined on a Project by Project Basis Based on a Project Credit Rating to Accurately Reflect Default Risk of Each Project.

Loan guarantees under Title XVII are not intended to be a subsidy for projects with poor economic fundamentals. Consequently, the credit subsidy cost to be paid by the borrower should be based on a realistic analysis of the credit risk of the project. The DOE should require a project credit rating in order to accurately determine the economic viability of a project, adjusted for the risk credit markets might assign because of the reliance of the project on new and innovative technology. For example, such a project credit rating should assess the market for the output of a generating project, the financial commitment of the project sponsors and creditworthiness of the borrower, but should not penalize the project because it is based on technologies that credit markets view as carrying increased risk. A project credit rating will provide the DOE with a complete evaluation of the viability of the project and include the creditworthiness of the project, and ensure that the loan guarantees focus on mitigating technology risk, but not normal credit risk.

The consideration of the creditworthiness of each borrower is in accord with directives issued pursuant to the Federal Credit Reform Act of 1990 by the Office of Management and Budget ("OMB") in Circular No. A-129, Policies for Federal Credit Programs and Non-Tax Receivables (Nov. 2000), Appendix A. ¶ I.4.a.(3), which states, "Agencies shall ensure that ... [e]very effort is made to prevent future delinquencies by following appropriate screening standards and procedures for determination of creditworthiness." Further, "Agencies shall follow sound financial practices in the design and administration of their credit programs." *Id.* at Appendix. A ¶ II.2.

"Loan guarantees, by removing part or all of the credit risk of a transaction, change the allocation of economic resources. Loan guarantees may make credit available when private financial sources would not otherwise do so, or they may allocate credit to borrowers under more favorable terms than would otherwise be granted. This reallocation of credit may impose a cost on the Government and/or the economy." *Id.* As the DOE has not received any appropriation for the credit subsidy cost, it cannot reallocate credit differently from the market. Thus, the regulations should provide a means of determining the project credit risk similar to that used by financial markets.

3. A Thirty Year Loan Guarantee is Not Necessary To Further the Intent of Title XVII.

The NOPR provides for a duration of thirty years on DOE loan guarantees. Southern believes this time period is unnecessary and excessive. A five to ten year loan guarantee that covers the period of construction plus some number of years for initial operation and refinancing would provide the greatest benefit for the implementation of improved technologies and also limit the DOE's exposure to technology and commodity markets risks. Because the projects entitled to participate in the loan guarantee program under Title XVII should have a good prospect of repayment of the principal and interest of the loan after the commencement of commercial operation, the technology risk that is of most concern to the credit markets is most

pronounced, at least in the case of advanced nuclear projects, prior to the time construction is completed and permission to operate is granted by the Nuclear Regulatory Commission. The technology risk associated with an advanced nuclear project is greatly reduced when the project reaches commercial operation and financing from the credit markets should be available without a loan guarantee by the DOE at such time. Loan guarantees will be most beneficial during these periods to provide access to the credit markets when financing might not otherwise be available. A shorter loan guarantee period will also permit the DOE to provide its support to a greater number of projects by limiting the amount of time that its credit is tied to a particular project.

4. Pre-application Requirements Should Require A Tangible Demonstration of Commitment to the Project.

The definition of "eligible project" in the NOPR does not address whether advanced nuclear projects are required to have demonstrated some tangible level of commitment to the project before being considered "eligible." Because nuclear projects require a great deal of advanced planning and analysis prior to the commencement of licensing, and far in advance of construction, it is likely that some companies might seriously consider an advanced nuclear project and then decide not to go forward with the development of the project. Accordingly, in order to maximize the efficiency of the program, and ensure that guarantees are not awarded to speculative projects, the DOE should require a tangible step toward the development of a new nuclear project before considering the project eligible for a guarantee. Southern suggests that in order to be considered eligible that a project at least be the subject of a combined operation license (or construction permit) application to the Nuclear Regulatory Commission. The preparation and filing of such an application will demonstrate commitment to the project and ensure that only serious project sponsors are considered for loan guarantees.